IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4934 of 2004

WITH

CRIMINAL MISC.APPLICATION No 6052 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRA NARAYANBHAI RAJGOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4934 of 2004
MR PM THAKKAR WITH MR KJ PANCHAL for Applicant.
MR AD OZA PUBLIC PROSECUTOR WITH MR AY KOGJE, APP
for Respondent No. 1 - State.

2. Criminal Misc.Application No. 6052 of 2004
MR KJ SHETHNA WITH MR DAKSHESH MEHTA for Applicant.
MR AD OZA PUBLIC PROSECUTOR WITH MR AY KOGJE, APP
for Respondent No. 1 - State.
MR SV RAJU for Original Complainant.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2004

COMMON CAV JUDGEMENT

RULE. Mr. A.D. Oza, learned Public Prosecutor waives service of rule on behalf of respondent - State.

2. Since both these applications are arising out of the same offence, the same were heard together and are being disposed of by this common judgment.

3. The brief facts giving rise to the present applications are that one Mr. Manohar Mangaram Galani filed complaint against 19 named persons and also other accused persons whose involvement was disclosed during the course of investigation, bearing CR No. I - 1/1995, C.I.D. Crime, Vadodara Zone Police Station for the alleged commission of the offences punishable under Sections 120-B, 489, 348, 465, 466, 468, 471, 474, 409, 410, 109, 118, 167, 182, 114, 115, 219, 220, 506(2), 193, 195, 196, 199, 209, 200, 204 and 211 of I.P.C.

4. It is alleged in the said complaint that the complainant was doing work as the share broker in part time and that in March, 1992, there was a sharp rise in the share market. The original accused No.1 Kishor Keshwani who was the local resident had contacted the complainant for dealing in shares for sale and purchase of shares and that the said accused No.1 Kishor Keshwani had invested Rs.13 Lacs and suffered a loss. It is also alleged that the accused No.1 insisted the complainant to pay up the loss. However, the complainant was not liable and responsible for the said loss and on the contrary, the complainant had to recover the amount from the accused No.1 - Kishor Keshwani . It is further alleged that when the complainant insisted for settling the account, accused No.1 Kishor Keshwani got excited and gave threats that anyhow he would recover the loss from the complainant. The accused No.1 and his associates and relatives i.e. original accused Nos.2 to 13 had also given threats to the complainant. It is also alleged that because of the dispute and non-settlement of the account, the complainant had refused to part with the video cassette which the complainant was having with him. The accused No.1, had, therefore, brought heavy pressure on the complainant and gave threats that he would file false complaints in Courts of all over the State of Gujarat and would handcuff and would parade the complainant all over the Country.

5. It is also the case of the original complainant that thereafter the accused No.1 and others filed false complaints in different Courts of the State of Gujarat through fictitious persons and obtained non-bailable warrants against the complainant and his family members. It is also alleged that with the help of other accused persons - Police Officers i.e. from accused Nos.14 to 19, the complainant and his relatives were arrested and that the accused persons executed warrants by illegal means. It is also the case of the Complainant that the complainant and his family members were harassed by the Officers and were taken from one place to another and one after another such warrants were executed and the complainant and his family members had to undergo great mental torture.

6. Since the issue regarding issuance of non-bailable warrants, upon filing of bogus and frivolous complaints has come to the fore-front in the year 1994, a public interest litigation came to be instituted by practicing advocate of this Court vide S.C.A. No. 13258 of 1994 wherein the Division Bench of this Court on 20.12.1994 directed the Director General of Police, Gujarat State, to inquire about the said matter, and if necessary, to entrust the inquiry to the Competent Senior Officers of the C.I.D. Crime Branch and he was further directed to submit the report to the Court as early as possible. In pursuance of the said directions, the then Investigation Officer and the Additional Director General of Police filed various respective reports before this Court from time to time. During the pendency of investigation of C.R. No. I - 1/1995, the co-accused persons, namely, Kishor Keshwani and others preferred Special Criminal Application before this Court for quashing the F.I.R. and investigation in the said C.R. No. I - 1/1995 on the ground that there was a bar under Section 195 of Cr. P.C. to carry out the investigation in C.R. No. I 1/1995 since most of the offences alleged were covered under Section 195 of Cr. P.C., the said Special Criminal Application was admitted and ultimately allowed by this Court (Coram :- N.J. Pandya, J.) on 14.08.1997 and the criminal proceedings and investigation of the said C.R. No. I - 1/1995 were quashed. The Court has also dismissed S.C.A. No. 13258 of 1994 filed by the advocate of this Court being a public interest litigation.

7. The aforesaid order of this Court dated 14.08.1997 was challenged by the original complainant before the Hon'ble Supreme Court bearing SLP (Cri.) Nos.

3623 - 3628 of 1997 which have given rise to Criminal Appeal Nos. 1211 - 1216 of 1999 and the Hon'ble Supreme Court has quashed and set aside the order passed by this Court on 14.08.1997 vide its order dated 17.11.1999 and observed that it was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled. The Hon'ble Supreme Court has, therefore, set aside the orders quashing the complaints and investigation made thereunder and directed that those cases may be proceeded further in accordance with law. The Hon'ble Supreme Court has, however, made it clear that needless to mention that its setting aside the impugned order did not tantamount to expression of its opinion on merits and the accused, therefore, may not feel aggrieved and were entitled to take any appropriate remedy that was available to them under the law.

8. After passing of the aforesaid order by the Hon'ble Supreme Court of India, the co-accused, namely, Kishor Keshwani and 12 others have approached this Court for seeking anticipatory bail in the event of their arrest in the aforesaid C.R. No. I - 1/1995, on 19.11.1999, vide Cri. Misc. Application No. 6840 of 1999 and 7056 of 1999. Both these applications were rejected by this Court (Coram :- R.P. Dholakia, J.) on 28.07.2000 by observing that looking to the detailed complaint filed by the complainant and various other proceedings and documentary evidences, the Court was of the prima facie opinion that fair and just investigation was required to be done by the Investigating Officer in a case like this so as to reach at the roots of the offence. The Court was also of the view that if anticipatory bail was granted, then certainly, they would interfere with the investigation and thereby fair and just investigation would be hampered. Inspite of rejection of this application for anticipatory bail of the co-accused way back in July, 2000, the Investigating Agency was not able to arrest all the accused persons who are learnt to be absconding.

9. Since the name of the applicant in Cri. Misc. Application No. 4934 of 2004 was subsequently figured during the course of investigation and since the name of the application in Cri. Misc. Application No. 6052 of 2004 is already there in the F.I.R., they were apprehending their arrest and hence, initially, they have approached to the learned Sessions Judge, Fast Track Court, Baroda and on rejection of their applications for anticipatory bail, they have approached to this Court by filing the aforesaid two applications separately.

10. Mr. P.M. Thakkar, learned Senior counsel appearing with learned advocate Mr. A.J. Panchal for the applicant has submitted that the applicant was not at all concerned with the alleged offence. The applicant has no knowledge regarding commission of such offence at all. The complaint was filed on 03.02.1995 and it was alleged that the offence was committed from December, 1993 to 03.02.1995. Even in the complaint filed covering the incidents of above 1.1/2 years, no allegation whatsoever was levelled against the applicant. The name of the applicant was not at all mentioned or referred to in the complaint. It is the case of the prosecution that during the course of investigation, the name of the applicant was disclosed and even for this also, there is no direct, indirect or circumstantial evidence showing the involvement of the applicant. The main allegation against the applicant was that the warrants were handed over to the applicant for execution, though none of the warrants were addressed or directed to be executed by the applicant. The allegation was also against the applicant to the effect that in two warrants issued by learned Judicial Magistrate First Class, Padra, Dist. Vadodara against the complainant and his father were directed to be executed through P.I., Padra and in two other warrants, it is alleged to have been issued by JMFC, Padra, Dist. Vadodara and no direction was given to any person to execute the warrant. It is also alleged against the applicant that warrant issued by learned JMFC, Jamkhambhalia against the complainant and his brother was a Remand warrant and not arrest warrant. Some corrections were made and initially, the said warrant was addressed to Ahmedabad CID and thereafter corrected as "City Crime, Ahmedabad, D.C.P.". It was also alleged against the applicant that warrants were to be executed outside the jurisdiction and, therefore, the applicant without any lawful authority passed an order of execution of such warrants and thereby committed the said offence.

11. Mr. Thakkar has taken the Court to the various statements recorded by the Investigating Agency, during the course of investigation. Some of them are the statements of Mr. Pratapsinh Govindsinh Zala, Hemantkumar Ratanlal Vyas, Dilip Amrutlal Vyas, Suresh Ramchandra Kaloliya, Narendrakumar Harjibhai Sondarva, Prabhudas Natthubhai Majithiya, Chandravadan Dinubhai Joshi, Gorakhbhai Pitambarbhai Sonvane, Kantipuri Chhaganpuri Bava, Virendrasinh Gagubha Jadeja, Rajuji Bachuji Bihol and Prabodhchandra Dalpatram Bhatt. He has also invited the Court's attention to the letters dated

04.03.1994 issued by the applicant for execution of the warrant as well as the letter dated 09.03.1994 seeking permission to go to Bombay for execution of the warrant. Though he has not disclosed the source from where the applicant has got all these documents, according to him, it is the record of the Court and the applicant can have certainly an excess to such public record. He has submitted that none of these statements would show any kind of involvement of the applicant and whatever order was passed by the applicant for execution of the warrant was in discharge of his official duty. The applicant has neither taken any interest in any of the alleged criminal complaints nor played any role whatsoever in procuring the task of execution of warrants within his jurisdiction. Even if one would remotely canvass the case that there was some administrative lapse in execution of the warrants, the applicant cannot be held responsible for the same after the expiry of the period of more than 10 years.

12. Mr. Thakkar has further submitted that all the aforesaid allegations levelled against the applicant are absolutely unbelievable and they are not even probable. The incident referred to in the complaint had taken place prior to about 10 years and the applicant is not maintaining any record as he never knew that in future there would be allegation against him. That the applicant has no knowledge about any such warrants issued by the learned JMFC, Padra or Jamkhambhalia. The Investigating Agency has ignored the material aspect that the bailable warrants were issued by the learned Metropolitan Magistrate, Court No. 18, Ahmedabad and the same were to be addressed to and executed by the applicant. The execution of process is considered to be a table work and as per the routine, lower staff used to prepare the notes and such notes were placed only for passing of orders and relying upon the submission made by the lower staff, bona fide high officers used to pass the orders. Once the orders are passed by the Judicial Officer, the Police had no choice but to act as per the order passed and thus, the Police Officers were not required to take any decision or had no discretion to exercise and the same was a routine work. He has, therefore, submitted that looking to the complaint and also the case of the prosecution and the papers of investigation, the applicant has no connection whatsoever either with the complainant and his relatives or with the accused and his relatives. The applicant was not dealing in shares nor he was concerned with any share transaction either with the complainant or with the name of the accused. The applicant was also not concerned with the

alleged dispute between the complainant and the accused. Even with regard to giving of threats by the accused No.1 to the complainant, the applicant was not in picture and at no point of time, the applicant either by himself or through his sub-ordinate staff gave any threat to the complainant or any of his relatives. Mr. Thakkar has further submitted that so far as filing of the false and fictitious complaints by fictitious persons at the instance of accused No.1 and his relatives in different Courts of the State of Gujarat are concerned, the applicant is in no way connected. It is not even the case of the complainant that before filing of such complaints, the applicant has ever been approached or contacted by any of the accused and that he was an instrument in filing such complaints in different Courts. Mr. Thakkar has further submitted that there is no evidence worth the name on record to show that the accused No.1 ever contacted the applicant during the entire episode and that the applicant was in know of the dispute between the complainant and the accused and was also in know of the alleged conspiracy hedged by the accused and his relatives. There is also no evidence worth the name to show that the applicant has ever accepted any bribe, commission or percentage and therefore, there is no offence under the Prevention of Corruption Act as far as the applicant is concerned.

13. Mr. Thakkar has lastly submitted that the applicant has not played any role and whatever was done during his tenure as D.C.P., Ahmedabad City, Crime Branch, Ahmedabad was part and parcel of his normal duty and administrative function. The applicant being a Senior High ranking Police Officer, the premature arrest without any sufficient evidence would ruin not only the whole career of the applicant but also of his dependents and it would cause irreparable loss to the applicant and his family members. Mr. Thakkar has further submitted that the applicant has all throughout fully co-operated with the investigation and his statement was also recorded. Mr. Thakkar has lastly submitted that there is no involvement in the main offence and if at all the case of the prosecution is accepted in toto, there is simple administrative lapse for which an application for anticipatory bail should not be rejected. Mr. Thakkar has further submitted that more than 10 years have passed and investigation is virtually over and all relevant materials etc. have been collected. Hence, there is no chance for tempering of the evidential witnesses in the case.

14. He has, therefore, submitted that the person in

charge of the Vadodara Zone Police Station, CID Crime may be directed to release the applicant on bail in the event of his arrest in connection with C.R. No. I 1/1995.

15. So far as Cri. Misc. Application No. 6052 of 2004 is concerned, Mr. K.J. Shethna with Mr. Dakshesh Mehta, learned advocates appearing for the applicant have submitted that the applicant was totally bad ridden from 05.04.1993 to 30.11.1994 and despite this fact, the applicant was falsely involved in the case. Since the applicant came to know about this, he tendered his explanation with all documentary evidence to Addl. D.G.P., C.I.D. Crime, Gujarat by R.P.A.D. who received the same on 06.03.1995 and yet no one has investigated the same nor any statement of the Doctors or Hospital records have been collected. It is further submitted that the Investigating Agency presented Charge-sheet against 36 accused in which the applicant is shown as one of the accused and therebeing no evidence against the applicant, the applicant filed Cri. Misc. Application No. 5285 of 2004 before this Court for quashing the name of the applicant from F.I.R. No. I - 1/1995 and from the Chargesheet filed in C.R. No. I - 1/1995. The anticipatory bail application preferred by the applicant before the Sessions Court was also rejected on the flimsy ground and hence, present application is filed before this Court.

16. Apart from the factual background and the plethora of documentary evidence which shows that the applicant was not involved at all with the alleged offence, the attempt on the part of the Investigating Agency to procure the custodial interrogation of the applicant is contrary to the provisions of law. The bare reading of Section 195 read with Section 340 and 341 of Criminal Procedure Code which are mandatory provisions, the present criminal case No. I - 1/1995 filed by the complainant is absolutely illegal. The Hon'ble Supreme Court in the case of M. NARAYANDAS V/S. STATE OF KARNATAKA AND OTHERS, 2004 S.C.C. (CRI.) 118 has held that "Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once the investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance in view of the embargo in Section 195. If it is so and if accused are arrested during the investigation and if thereafter, the Court cannot take cognizance of present charge-sheet filed after investigation of F.I.R. No. I - 1/1995, whether they will remain in jail for life time and if not released on bail, whether their bail bonds

will remain in force for life time ? These questions are not replied or explained by the Hon'ble Supreme Court. The only question decided by the Hon'ble Supreme Court at the relevant stage was whether the investigation should be permitted to proceed or not and, therefore, even if the applicant is arrested in F.I.R. No. I - 1/1995, it will be nothing but an illegal arrest. On this very issue, Special Criminal Application Nos. 132, 242 and 243 of 2004 have been admitted and rule have been issued.

17. Mr. Shethna has relied on the old decision of the Bombay High Court in the case of KESHAV VASUDEO KORTIKAR V/S. EMPEROR, AIR 1933 BOMBAY 492, wherein it is held that what weighs with the Court in granting bail is the guarantee that the accused will not either abscond or obstruct the prosecution in any way. The principal ground for the grant of bail is the certainty that it must be a very protracted and complicated case.

18. Mr. Shethna has further relied on the decision of the Hon'ble Supreme Court in the case of H.N. RISHBUD AND ANOTHER V/S. STATE OF DELHI, A.I.R. 1955 S.C. 196 for the purpose of explaining the scheme of the Code with regard to investigation. Under the Code investigation consists generally of the following steps :-

(i) Proceeding to the spot;

(ii) Ascertainment of the facts and circumstances of the case;

(iii) Discovery and arrest of the suspected offender;

(iv) Collection of evidence relating to the commission of the offence which may consist of;

(a) the examination of various persons (including the accused and the reduction of their statements into writing, if the officer thinks fit,

(b) the scheme of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

(v) formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for a trial and

if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173.

19. Mr. Shethna has further relied on the decision of the Hon'ble Supreme Court in the case of BHOLANATH AMRITLAL PUROHIT V/S. STATE OF GUJARAT 1970 (2) S.C.C. 414 for the proposition that an information laid before the Police or even a sanction granted for a prosecution by the Police would not meet the requirements of Section 72.

20. Mr. Shethna has further relied on the decision of the Hon'ble Supreme Court in the case of GURBAKSH SINGH SIBBIA V/S. THE STATE OF PUNJAB, A.I.R. 1980 S.C. 1632 for the proposition that this Court has got very wide power to impose conditions while granting anticipatory bail. The applicant shall co-operate to the investigation. The applicant shall not temper with any evidence or approach to any of the witnesses. It shall be open for the investigating agency to record statement of the applicant or ask for his remand. In absence of any evidence against the applicant, the custodial interrogation is not required at all. In view of these factual and legal submissions, Mr. Shethna has submitted that the applicant be granted anticipatory bail.

21. Mr. Shethna has further submitted that the applicant is a very Senior advocate practicing in the State of Gujarat, more particularly, in Baroda since last more than 36 years and the age of the applicant is 61 years. He is suffering from heavy hyper tension and heavy cronic diabetes for the last more than 15 years. The applicant's body is too heavy and in the month of Oct./Nov. 2003, he was admitted to S.S.G. Hospital for cardiac treatment for as many as 20 days and if he is sent in custody, it would be dangerous to his life and even on that ground also, the applicant should be granted anticipatory bail.

22. Mr. A.D. Oza, learned Public Prosecutor with Mr. A.Y. Kogje, learned Additional Public Prosecutor appearing for the State have strongly objected to grant of anticipatory bail in each of these two applications. Mr. Oza has further submitted that both the applicants are directly or indirectly involved in the criminal conspiracy hatched by the original accused to commit the offences of interference with the administration of justice by misusing the lawful authority of the subordinate judiciary for obtaining non-bailable warrants and or executing the same against various innocent persons on trumped up charges with the dishonest

intention of extorting money and settling the disputes which were purely of civil nature. He has heavily relied on the reply filed in these two applications.

23. As far as Cri. Misc. Application No. 4934 of 2004 is concerned, Mr. Oza has submitted that the applicant in this application, at the relevant time, was a Deputy Commissioner of Police attached to the Ahmedabad City Crime Branch and the charges levelled against him are very serious in nature. A thorough investigation of the above case has revealed the clear involvement of the applicant in the criminal conspiracy hatched by the co-accused (most of whom are still absconding). Over and above the commission of offences under the different Provision of the Indian Penal Code, the allegations are also levelled against the applicant for an offence under Section 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act. He has further submitted that the investigation has revealed that the warrants were issued in five false and bogus criminal cases against the complainant and his family members from five different Courts in different districts of Gujarat viz., Jamnagar, Baroda, Kheda and Ahmedabad. Four warrants issued from Padra Court of learned JMFC, Baroda district were handed over to the applicant for execution especially when none of the said warrants were addressed and directed to be executed by the applicant. The said warrants were addressed to be executed through P.I., Padra, Dist. Vadodara whereas there was no direction in the warrants issued against the brother and the sister of the complainant and despite that, the applicant directed and sent P.S.I. - G.S. Patel to the State of Maharashtra to execute the said warrants all the way from Ahmedabad to Ulhasnagar which shows his involvement and complicity in the commission of the offences and the conspiracy thereof against the complainant and his family members. The applicant had shown undue interest in executing the said warrants despite the fact that the warrants from Padra Court were not directed to be executed by him. The applicant had not only directed the P.S.I. to execute the said warrants but also gave him enough police force to carry out the arrest of the complainant and his family members. The investigation has revealed that the said warrants issued from the Court of learned JMFC, Padra were never sent by post. On the contrary, the same were collected from the various Courts by the Co-accused Bharat Daulatram Bhojwani who is presently absconding and since he is very actively involved in the conspiracy against the complainant and his family members, it is presumed and it is very likely that the said warrants must have been handed over by hand to the applicant by

the said Bharat Daulatram Bhojwani. In a statement of V.G. Jadeja, the Reader in the office of the applicant, it is confirmed that it was the applicant who directed the execution of the warrants through P.I. Vigilance. A statement of Rajuji Nauji, a Registry Constable with Crime Branch, Ahmedabad was recorded wherein he has confirmed that no such warrants were received by the office of the applicant by post as there are absolutely no inward and outward entries on record. Therefore, the contention of the applicant that he received such warrants by post is totally false and the applicant is trying to mislead this Court by making false statements. The warrants issued from the Court of Judicial Magistrate, Padra showed the returnable date as 11.03.1994 and the said warrant was forged and the date shown was 22.03.1994, when actually there was no further returnable date on the warrants.

24. Mr. Oza has further submitted that the investigation has further revealed that the warrant issued by the JMFC, Jamkhambalia against the complainant and his brother was a "Remand Warrant" and not an "arrest warrant". The applicant had not checked and verified as to how he directed the execution of the said warrants as the complainant was never arrested before and was not in the custody of any Court. The JMFC, Jamkhambalia has no jurisdiction to send the said warrants to Ahmedabad City Crime to execute the said warrants in the State of Maharashtra. The said warrant is a forged warrant as there are several corrections in the warrants and are not counter signed by any Court staff or by the Magistrate, though the warrants are prepared by the learned JMFC, Shri D.R. Vakil, in his own handwriting and the said warrants were initially addressed to Ahmedabad CID Crime and the same has been removed by someone and has been corrected as "City Ahmedabad DCP", which clearly shows the negligence and/or involvement of the applicant in the criminal conspiracy.

25. Mr. Oza has further submitted that the investigation has clearly revealed well planned operation carried out by the applicant and his co-accused to arrest the complainant and his family members on the basis of warrants in bogus cases, some of which were never addressed to the applicant for the execution purpose and the applicant had absolutely no power to direct the execution of the same out of the State of Gujarat. The applicant has misused his powers as a Police Officer and hence, he does not deserve to be granted a discretionary order of anticipatory bail in the above case.

26. As far as the applicant in Cri. Misc. Application No. 6052 of 2004 is concerned, Mr. Oza has submitted that the applicant is the main accused in hedging the criminal conspiracy against the complainant and his relatives and the whole game plan was fixed at his office. Since there are more than 30 persons involved in the commission of aforesaid offences, the investigation in the above case is an ongoing process, which entailed visiting several places in various districts of Gujarat, and Maharashtra and examining numerous persons. The Investigating Agency was preoccupied with meeting the false and frivolous contentions of various co-accused, taken up by them in various proceedings before this Court. The investigation in the above case, therefore, could not be completed quickly, on account of the dilatory tactics adopted by the co-accused. During the investigation, it has been revealed that the entire initial conspiracy for the filing of false and bogus cases and issuance of non-bailable warrants, in the various Courts and various districts of Gujarat against the complainant and his family members, was hedged at the place of the applicant and this fact was revealed by a very important eye witness who has broken the entire conspiracy. The applicant is a master mind behind the entire plan of arresting the innocent persons, confine them, and knock out huge amount from them by employing the modus operandi of filing false and bogus criminal cases, in the name of fictitious persons, on trumped up charges. The applicant is a habitual offender indulging in the subversion of the process of law and securing non-bailable warrants against the innocent persons on the strength of bogus and frivolous complaints, which the applicant used to get instituted before the Courts of learned Magistrates, at the instance of fictitious persons.

27. Mr. Oza has further submitted that the grounds urged by the applicant in his application do not entitle him to seek discretionary order under Section 438 of Cr. P.C. in his favour, in view of the nature of the offences committed by him. Inspite of claiming to be a practicing Senior advocate of Vadodara and inspite of engaged in a noble profession to uphold the rule of law, equity, justice and good conscience, the applicant has stood low in subverting the judicial system and process of law by aiding and abetting the institution of frivolous criminal prosecutions at the instance of fictitious persons, for securing the orders of non bailable warrants against the innocent persons, to oblige the unscrupulous litigants and clients and to facilitate the settlement of civil disputes.

28. Mr. Oza has further submitted that there is no substance in the applicant's contention that there is a bar under Section 195 of Cr. P.C. in carrying out the investigation of the above case as the offences involved in C.R. No. I - 1/1995 are covered by the bar under Section 195 of Cr. P.C. Hence, the procedure under Section 340 of Cr. P.C. would have to be followed. The said issue of bar under Section 195 and 340 of Cr.P.C. has been considered and settled by the Hon'ble Supreme Court in Special Leave Petition Nos. 3623-28 of 1997 which gave rise to Criminal Appeal Nos. 1211-1216 of 1999 filed by the original complainant against the order passed by this Court wherein the Hon'ble Supreme Court has clearly held that it was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled.

29. Mr. Oza has further submitted that the applicant has abused and misused his legal acumen and skill, to disrupt the administration of justice by indulging in nefarious activities of securing non-bailable warrants against the innocent persons on trumped up charges, on the basis of vexatious complaints filed by the fictitious persons. Since the applicant claims to be a senior advocate and a lawyer knowing the implications for flouting the law, the applicant cannot escape from the legal consequences for the commission of aforesaid offences by him. The investigation has revealed that the applicant has received several telephone calls from the office and residence of Kishore Keshwani, at odd hours, and around the same time, when the aforesaid 10 false cases were registered and the complainant and his family members were arrested and were in custody of Gujarat Police. The Investigating Agency has seized the statement of STD Calls (bills) of telephones belonging Kishore Keshwani and there is sufficient material to show that the applicant has conspired to commit the above offences with reasonable knowledge and willingness. The conduct and behaviour of the applicant, the nature of offences committed by him and his role in the entire conspiracy does not entitle him to seek a discretionary order of anticipatory bail from this Court. Mr. Oza has further submitted that the applicant, since 1995, in collusion and connivance with other co-accused persons have succeeded in remaining at large from the long arms of justice. Since the above case is based on deep rooted and wide spread conspiracy, the case of the applicant cannot be differentiated and distinguished from the rest of the accused persons, whose anticipatory bail

applications and bail applications have already been rejected by this Court and the Sessions Court. The arrest and detention of the other co-accused would be facilitated and easy if the investigating agency is able to have the custodial interrogation of the present applicant. There are reasonable grounds to believe that the applicant is well aware of the current whereabouts of the other co-accused who are learnt to be absconding. The efforts of the Investigating Agency for arresting the remaining co-accused, who are absconding, shall be frustrated if the applicant is granted an order of anticipatory bail at this stage.

30. Mr. Oza has further submitted that the applicant had filed a substantive Special Cri. Application No. 415 of 2004 wherein he had, interalia, prayed an order of "Not to Arrest". However, the said petition has been rejected by this Court on 28.07.2004 and in view thereof, the present application is liable to be rejected.

31. Mr. Oza has further submitted that one Mrs. Leena V. Mehta, a professor in M.S. University had complained before the Division bench of this Court by stating that they had a financial dispute with a building contractor to whom they had engaged for building a house. The said Mrs. Mehta had complained that in order to extort money from her husband and Mrs. Mehta, the Contractor was filing false complaints of theft etc. against them at various police stations in Baroda and Ulhasnagar with the help of the applicant and the co-accused Ashok Advani, an advocate from Ulhasnagar. This Court has directed the Deputy Superintendent of Police CID (Crime), Vadodara to look into the aforesaid complaint of Mrs. Leena Mehta. The applicant has also got a criminal antecedents since the applicant is also arrested in another case being C.R. No. I - 196/2003 under Sections 364A, 395, 397, 384, 467, 468, 471, 477-A of I.P.C. and 33, 3 and 7 of Bombay Money Lenders Act, 1946. The applicant is also involved in the case bearing No. C.R. No. I - 66/2003 registered at Sayajiganj Police Station, Baroda City under Section 341, 186, 294 and 114 of I.P.C. The applicant is absconding and evading his arrest for a long time and despite several raids conducted by CID and City Police at the residence and office of the applicant and also at Bhopal, Madhya Pradesh and despite several attempts were made to serve the summons upon the applicant at his place, the applicant could not be found and has not co-operated with the investigating agency at all.

32. Mr. Oza has, therefore, submitted that no

sympathy should be shown to such a habitual offender. The offence under Section 409 of IPC which is part of offences in C.R. No. I - 1/1995 is punishable with the imprisonment for life. Since the aforesaid offences entail severe punishment and as the same are serious in nature, the discretion of this Court under Section 438 of Cr.P.C. should not be exercised sympathetically in favour of the applicant especially when the application for anticipatory bail filed by the co-accused/other conspirators of the applicant have been rejected by this Court and/or by Sessions Court by giving a reasoned order.

33. With regard to the grounds raised and submissions made by the learned Senior Counsel Mr. P.M. Thakkar as well as learned advocate Mr. K.J. Shethna, appearing on behalf of their respective clients, against the custodial interrogation, Mr. Oza has relied on the decision of the Hon'ble Supreme Court in the case of STATE REPRESENTED BY C.B.I. V/S. ANIL SHARMA, A.I.R. 1997 S.C. 3806 wherein the Hon'ble Supreme Court found force in the submission of C.B.I. that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of suspected person is of tremendous advantage is disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

34. Mr. S.V. Raju, learned advocate, after seeking permission of this Court to address to the Court on behalf of the original complainant so far as Cri. Misc. Application No. 6052 of 2004 is concerned, has submitted that the contention raised by Mr. Shethna in the said application with regard to bar of Section 195 of Cr.P.C. is fully unjustified and not sustainable at law. He has further submitted that the reliance placed by Mr. Shethna on the decision of the Hon'ble Supreme Court in the case of M. NARAYANDAS V/S. STATE OF KARNATAKA AND OTHERS, 2004 S.C.C. (CRIMINAL) 118 is also misplaced.

35. Though these two applications are heard together and are being disposed of by this common judgment and order, the quantum of involvement of the applicants in commission of offence appears to be unequal and dissimilar and normally, they cannot swim or sink

together. This can be so if their cases are totally different and isolated and in no way connected with deep rooted conspiracy to shake or destroy the entire system of administration of justice. The Court cannot loose sight of the fact that out of the two applicants, who are before the Court, one is high ranking Police Official i.e. Deputy Commissioner of Police and another one is the leading advocate of city of Vadodara. They are supposed to play very vital role in justice delivery system and the society as a whole in general and the litigants, in particular, expect high standard of moral and ethical values from them, over and above the normal, procedural observance of the legal formalities. The issue before the Court is not as to whether they are actually involved in the commission of crime or they are duped, as the same would be proved during the course of trial. The real issue, however, at present before the Court is that their names are rightly or wrongly, directly or indirectly joined with such crime of very serious nature and unless and until, the whole chain is established and the real culprits are brought to the book and the quest for finding out the truth is over, can they claim march over the others ? The Court's answer would certainly be in the negative. It is true that the case of Mr. Rajgor is slightly on better footing and there appears to be no direct evidence against him. It is difficult to express any opinion at this stage as to whether role played by him in this entire episode is merely an administrative in nature and of normal routine functions of a head of the unit, or it was with an oblique motive to facilitate the real accused in achieving their well-designed game plan or conspiracy against the complainant and his relatives. These questions can find their answers only during the course of investigation and custodial interrogation is merely a part of such investigation. The investigation is still going on. Some of the main accused are yet to be brought within the net. Earlier this Court has rejected the anticipatory bail application of 12 accused persons. Regular Bail application of some of the accused are also rejected either by this Court or by the Sessions Court. The petition for quashing of FIR though once allowed by this Court, the judgment allowing the said petition was reversed by the Hon'ble Supreme Court and restored the FIR as well as P.I.L. and the hearing of the said P.I.L. is now going on and investigation in the said FIR is vigorously pursued. The petition seeking transfer of criminal case from C.I.D., Crime, Vadodara Unit to D.S.P. (C.B.I.), Gandhinagar is also dismissed. In this backdrop of the matter, this Court does not think it just and proper to exercise its judicial discretion under

Section 438 of the Cr. P.C. in favour of either of these two applicants by granting anticipatory bail.

36. One has to see the scheme as envisaged under the various provisions of Cr.P.C. Section 3 (c) of the Code defines cognizable offence which empowers a Police Officer to arrest without warrant. Section 3 (h) defines investigation which includes all the proceedings under this Code for the collection of evidence conducted by Police Officer or by any person authorised by Magistrate in this behalf. Section 3 (r) defines Police Report which means a report forwarded by a Police Officer to a Magistrate under Sub-section 2 of Section 173. Section 173 deals with the report of Police Officer on completion of investigation and sub-section (2) thereof says that as soon as investigation is completed, the officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report which interalia includes the name of the parties, the nature of the information, the names of the persons who appear to be acquainted with the circumstances of the case, whether any offence appears to have been committed and, if so, by whom; and whether the accused has been arrested. On the basis of this scheme of the Code, the Court is of the view that the arrest of the accused is the part of the investigation process. Section 156 of the Code talks about the Police Officer's power to investigate cognizable offence which clearly states that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the Provisions of Chapter XIII. Section 157 of the Code prescribes the procedure for investigation under which an Officer in charge of a Police Station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender. Under Section 190 (1) of the Code, the Magistrate can take cognizance of the offence upon a Police Report of such facts. However, under Section 195 of the Code, no Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate; of any offence punishable under any of such sections of the I.P.C. as mentioned in Sub-section (b) thereof. Since the Court has not taken any cognizance of the offence qua the applicants are concerned, Section 195 is not at all applicable and since Section 195 is not applicable, the procedure prescribed

in Section 340 of the Code is not required to be followed.

37. The reliance placed by Mr. Shethna on the decision of the Hon'ble Supreme Court in the case of M. NARAYANDAS V/S. STATE OF KARNATAKA AND OTHERS, 2004 S.C.C. (CRI.) 118 (SUPRA) is also misplaced as in that case, the Court has recorded the contentions of the respondents to the effect that the said case fell under Section 195 of the Cr.P.C. Hence, the provision of Chapter XXVI of Cr.P.C. would apply. Once the provisions of Chapter XXVI applied, impliedly, the provisions of Chapter XII get excluded. It was also submitted that in such a case, the only procedure which could be followed was to make an application to the Court, but by not following the procedure laid down under Chapter XXVI the right of the respondents under Article 21 of the Constitution of India had been affected. If an application had been made to the Court and the Court had taken a decision then under Section 341 Cr.P.C. an appeal could have been filed. Hence, by making a complaint to the police, who would then make a report to the Court and the Court would take cognizance the respondents were deprived of the right of appeal as provided under Section 341. Dealing with all these contentions, the Hon'ble Supreme Court has held in that case that submissions made on behalf of the respondents cannot be accepted for several reasons. It is to be seen that the High Court did not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. The Court has further observed that even otherwise, there was no substance in the submission. The question whether Section 195 and 340 of the Cr.P.C. affect the power of the Police to investigate into a cognizable offence has already been considered by the Hon'ble Supreme Court in the case of STATE OF PUNJAB V/S. RAJSINGH, 1998 (2) S.C.C. 391 wherein it is held that from a plain reading of Section 195 of Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190 (1) of Cr.P.C. and it has nothing to do with the statutory power of the Police to investigate into FIR which discloses a cognizable offence in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 of Cr.P.C. It is of course, true that upon the charge-sheet, if any, filed on completion of the investigation into such an

offence, the Court would not be competent to take cognizance thereof in view of the embargo in Section 195 (1) (b) of Cr.P.C., but nothing therein deters the Court from filing a complaint for the offences on the basis of the FIR filed by the aggrieved private party and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down under Section 340 of Cr.P.C.

38. On the basis of the aforesaid two judgments of the Hon'ble Supreme Court, the Court is of the view that since the Police report in the form of Charge-sheet qua the applicants is still not filed and investigation is yet not completed, the Investigating Officer's power to arrest or to seek the custodial interrogation is not affected by the provisions contained in Section 195 (1) (b) of the Cr.P.C. Hence, looking to the facts and circumstances of the case and looking to the case law on the subject and the settled legal position, none of these two applicants deserve for any discretionary relief in the form of grant of anticipatory bail and hence, both these applications deserve to be rejected.

39. Hence, both these applications are accordingly rejected. Rule discharged without any order as to costs.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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